1949. **File No.** O. Tenancy/49 Pt. III

LEGAL DEPT.

A **BRANCH**

K **Subject:—**

Opinions under the Bombay Tenancy and Agricultural Lands Act, 1948.

(For previous pps. pl. see pls. I and II)

P. 81
E

File No. O. Tenancy/49 Pt. III

43-P

'K'

C O N T E N T S.

Legal Department File No. 0. Tenancy/48 Pt. III.

Sr. No.	R.I. / O. No.	Subject	Pages.
		Bombay Tenancy and Agricultural Lands Act, 1948.	
1.	8705 3.8.49.	Bombay Tenancy Act, 1939 Secs. 2A and 23(1)(b) Sub-~~mamlatdar~~ letting whether Ramlu Laxman would be entitled to the benefit of Sec. 23(1)(b).	1-4.
2.	10572 19.9.49	Secs. 29(2) and 85- while Mamlatdar will have jurisdiction to try whether the tenancy has been properly and lawfully terminated under Sec. 29(2), the civil court can have no jurisdiction under sec. 85.	5-6.
3.	11471. 14.10.49	Clauses (a) to (e) of Sec. 14(1) whether protected tenancy can ~~be~~ also be terminated if it comes within any of the clauses.	7-8.
4.	6989 24.6.49	Bom. Tenancy Act, 1939. Sec. 32(3)-Bom. Money Lenders Act, 1946-Sec. 2(9) - whether by issuing ante dated receipts the land lord has committed any offence. Whether the supply of groundnut seeds to the tenants on condition of payment of double quantities would be a loan within the meaning of Sec. 2(9).	9-12.
		Whether any action would be possible against the landlord for ~~savecery~~ rent in kind instead of in cash.-	
5.	11380. 12.10.49	Tenancy Act, 1939, Sec. 16 Tenancy Act, 1948 - Sec. 13 Whether tenants can withhold rent in lieu of rent not passed on by landlord.-	13-14
6.	10154 6.9.49	Sec. 88(1)(c)-Whether the rights acquired by the tenants under the old tenancy Act-in respect of ~~agricultural~~ agricultural lands ~~would~~ survive.-	15-22
		Whether leases, sales etc. made on or after 28th Dec. 1948 in respect of the lands falling within the limits of the area referred to in Sec. can be ~~not~~ recognized.	

Sr. No.	R. I./ O. No.	Subject	Pages.
7.	11338 11-10-49	cl.(c) of Sec. 88(1) As the right of protected tenancy acquired under the Bom. Tenancy Act, 1939 is subject to the liability of the tenancy being determined under Sec. 9 of that Act which corresponds to ~~xx~~ Sec. 34 of the present, the protected tenancy tenancy of these lands is liable to be terminated under Sec. 34 -	19-20.
8.	11541 17-10-49	Bom. Tenancy Act, 1939 Whether there is any reason to reconsider R.L.A's opinion No. 8481 dt. 27-7-49 -	21-22.
9.	11681 19-10-49	Whether a statutory tenant recognized under sec. 2A of the Tenancy Act was entitled to the benefit of Sec. 25 -	23
		Whether there is any reason to reconsider R.L.A's opinion No. 8705 dt. 31-8-49.	23-24.
10.	12105 26-10-49	Appeal pending before the prant Officer - R.L.A. does not desire to express any opinion.	25-26.
11.	11416 13-~~8~~ 10-49	(1) Whether a permanent tenant is a landlord in relation to his sub-tenant and whether he can recover possession under sec. 34(1)	
		(2) Whether the Tenancy Avnl Karkun can entertain an application for recovery of possession under Sec. 34(1) -	27-30.
12.	12622 9-11-49	Secs. 29(2) and 89(2)(b) - whether Civil Court had ~~xx~~ any jurisdiction to evict the ~~xx~~ tenant and to resore possession to the landlords since such power vested only in the Mamlatdar under Sec. 29(2).	
		Whether Government has any power to interfere in the matter since even the revisional jurisdiction vests in the Revenue Tribunal.-	31-34.
13.	11384 ~~R~~-10-49	Sec. 29(2) and 85(1) C.P.C. order 20 R.I. and order 40 Rule I. Whether Sec. 29(2) which prohibits a landlord	

Sr. No.	R.I. / O. No.	Subject	Pages.
		of any land except under an order of the Mamlatdar would be applicable and preclude the receiver from taking possession of the land from the tenant directly.	
		Whether Sec. 85(1) which bars the jurisdiction of the Civil court would come in the way of the receiver from obtaining possession.	35-38.
	16-11-49	Tenants claim to permanent tenancy -whether it would be right to restore the grant Officer's decision.	39-40.
16.	~~12324~~ 8-11-49 ~~12341~~ 14-11-49	Whether in revision applications Government is bound to hear the opposite party whether such party can as of right or necessity demand a hearing.	41-44.
16.	~~8488~~ 27-7-49	Whether application filed on behalf of two of the joint occupants of the land who are minors can be treated as one on behalf of all the joint occupants even though it has not been signed by the other two major joint occupants.	45-46.
17.	~~11872~~ 10-10-49	Whether the merchants who have taken grass lands on lease from land lords ~~on lease from landlords~~ in palghar Taluka are entitled to the benefits of the Act.-	47-48.
18.	~~12122~~ 20-10-49	Whether a grass contractor who takes grass lands on lease for the purpose of carrying on a trade is a tenant as defined in the Act-	49-50.
19.	~~11071~~ 20-7-49 ~~10465~~ 16-9-49	Whether the Tenancy Court has the power in its discretion to issue a warrant for the arrest of the witness	
		Whether T.A.K. can effect the arrest by its own peon a servant by giving him a duly addressed warrant.-	
20.	~~11222~~ 10-10-49	Secs. 27(1) and 63(1) - Bom. Hereditary Offices Act, Sec. 8 -whether tenancy is terminated if a portion of the S.No. is sub-let by a tenant.- sale of unassigned watan land to watandar of the of the same watan.-	

Sr. No.	R. I. / O. No.	Subject	Pages.
21.	14286 3-12-49	Sec. 85-Transfer of cases before Civil Courts in Baroda -	59-60
22.	14732 19-12-49	Sec. 74(2) and 78(1) - Summary dismissal of appeals -Whether parties should be heard. -	61-66.
23	14286 3-12-49	Sec. 2(1) Lease of right to pluck fruits -Whether provisions of the Tenancy Act would be applicable. -	67-68.
24	12447 24-11-49	Whether a protected tenant of watan lands is entitled to purchase such lands as provided in Sec. 32 -	69-70.
25	11695 3-10-49	Sec. 44-Whether in view of grievances if would be competent for Government to take over the management of the village under sec. -	
		Whether it is necessary to amend the land Rev. Code for controlling assignments of land for public wells, tank tanks, weeds grazing areas. etc.	71-74.
26	15080 24-12-49	Whether there would be any legal objection to Government assuming the management of the estate under sec. 44 .-	75-76.
27	226 3-1-50	- Do --	77-78.
28	13616 5-11-49	Sec. 89(3) -Whether proceedings for the recovery of land under Sec. 7 of the Old Act could be entertained even by a tenancy Aval Karkun.-	79-80.
29	14215 8-12-49	Secs. 6, 7 and 11-Levy of Sakar in Ganged Estate.-	81-82.

EVY. 11/6.

CMP/19/6.

Office of the R.L.A.

Bombay Tenancy Act, 1939. Sections 2A and 23(1)(b)

Sub-letting.

Under section 2A of the Bombay Tenancy Act, 1939, a person lawfull cultivating any land belonging to another can be deemed to be a tenant unless the owner has within one year of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, made an application to the Mamlatdar for a declaration that the parson isx not a tenant. The Kabulayat executed by Vithu Laxman did not prohibit the sub-lease of the land. Consequently, Dandu Laxman would be deemed to be in lawful possession of the land and as such, a tenant within the meaning of section 2A. But his tenancy would be statutory tenancy. Section 23(1)(b) provides that every lease subsisting on the said date or made after the said date in respect of any land in such area shll be deemed to be for a period of not less than 10 years. A lease as defined in section 105 of the Transfer of Property Act is a transfer of a right to enjoy such property made for a certain time express or implied, or in perperuity in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value rendered periodically or on specified occasions to the transfer by the transferee who accepts the transfer on such terms. "Transfer" involved to constitute a lease is a transfer by the lessor to the lessee. In the presen case, statutory tenancy created by virtue of section 2A of the Bombay Tenancy Act would involve no such transfer. Consequently, it appears very doubtful whether statutory tenancy could be considered a lease within the meaning of section 23(1)(b). Moreover,

it is clear from the entry in the record of rights, as well as the statement of Bandu, that for the year 1947-48, he sub-leased the land to one Apra Gundu Patil. The object of the Bombay Tenancy Act is to prevent sub-tenancies, and this sub-tenancy was created after section 5(2) of the Bombay Tenancy Act was applied to tenancies in general. Consequently it appears that Bandu would not be entitled to the benefit of section 33(1)(b).

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8705, dated 3rd August 1949.

submitted for signature.
(as amended by A.L.R.)

Id/- 2/8.

A.L.R. R.K. - 2/8.

R.L.A.

KVY. 11/8. (Please see R.L.A's opinion ... 11681 of 19-10-49)

Office of the B.L.A.

Under clause (n) of section 70 of the Bombay Tenancy and Agricultural Lands Act, 1948, one of the duties and functions to be performed by the Mamlatdar is to take measures for putting the tenant or landlord or the agricultural labour or artisan into the possession of the land or dwelling house under this Act. Section 29(2) provides that no landlord shall obtain possession of any land or dwelling house held by tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form. Section 14(1) provides for termination of tenancy under certain circumstances and this provision is a general provision which is applicable to all tenancies other than the protected tenancies. Under section 34(1) the landlord is given certain rights to determine protected tenancies. On the termination of a tenancy either under section 14 or under section 34, as the case may be, landlord would be entitled to possession of the demised land provided the termination of the lease is valid and lawful. For obtaining possession on so terminating the lease, the landlord will have to file an application to the Mamlatdar under section 29(2) which applies to both kinds of tenancies, i.e., general tenancy as well as protected tenancy. It would, therefore, follow that the Mamlatdar will have jurisdiction to try whether a tenancy has been properly and lawfully terminated and whether the landlord should be awarded possession. In such, cases, the civil court can obviously have no jurisdiction under section 85. The

view taken by the District Tenancy Officer, endorsed by the Commissioner, N.D., is not correct.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U. R. to R.D., No. 10579, dated the 19th September 1949.

(Please also see R.L.A's No. 15043, dated 24-12-49).

Please see R.L.A's opinion No. 11471 dated 14-10-49

14-10-49.

EVY. 11/6.

Office of the R.L.A.

Revenue Department seems to have taken objection to the following statement contained in Remembrancer of Legal Affair's opinion No. 10579 dated 19th September 1949.

> "This provision (section 14(1) of the Bombay Tenancy and Agricultural Lands, Acts, 1948) is a general provision which is applicable to all tenancies other than protected tenancies."

Section 14(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, provides that the Tenancy of any land held by a tenant shall not be terminated unless such ~~tenant~~ tenant has committed acts specified in clauses (a) to (e). Section 34(1) provides that notwithstanding anything contained in section 14, a landlord may terminate the tenancy of a protected tenant, etc. The words "notwithstanding anything contained in section 14" have been inserted for the reasonthat section 14 is a negative provision, while section 34(1) is a positive provision. It is, therefore, clear that the words "notwithstanding anything contained in section 14" exclude the application of section 14 to a protected tenancy, that is to say, a protected tenancy can be terminated under section 34(1) although no tenancy can be terminated under section 14(1) except for the reasons stated in clauses (a) to (e). It is on this ground that the statement contained in the Remembrancer of Legal Affairs opinion which has been objected tenancy comes within any of the clauses (a) to (e) of section 14(1), it can also be terminated because those provisions are positive provisions, specifying the circumstances in which a tenancy can be terminated.

Sd/- P.M.DAD,
Remembrancer of Legal Affairs.

Office of the R.L.A.

Bombay Tenancy Act, 1939, Sec. 22(3). Bombay Money-lenders Act, 1946, Sec. 2(9). Ante dating rent receipts- Supply of seeds Whether loan Recovery of rent in kind instead of cash.

The first question raised for R.L.A's consideration is whether by passing ante dated receipts the landlord has committed any offence.

2. Under section 22(3) of the Bombay Tenancy Act, 1939, failure to pass written receipt for the amount of rent received by the landlord is an offence. The landlord has admittedly passed by receipts to the tenants for the amounts of rent received by him. The fact that the receipts were ante dated would not amount to failure on his part to pass the receipt ~~xx~~ within the meaning of section 22(3). Consequently, he has committed no offence under that provisions. By ante dating the receipts the landlord has also not committed forgery as it appears that there was no dishonest intention on his part for so ante dating. The landlord has, therefore, committed no offence.

3. The second question for R.L.A's consideration is whether the supply of ground-nut seeds to the tenant on condition of payment of double quantities would be a loan within the meaning of section 2(9) of the Money-lenders Act, 1946. "Loan" is defined in section 2(9) to mean an advance at interest by way of a credit whether of money or in kind. Supply of ~~froung~~ ground-nut seeds on condition of repayment of double quantities would certainly be loan within the meaning of that section as what is recovered in excess of the supply would be considered rent in kind. The landlord, however, contends that these transactions took place before the Bombay Money-lenders Act came

into operation. That is a matter for R.D. to decide.

4. The third question raised for the consideration of the R.L.A. is whether any action would possible against the landlord for recovering rent in kind instead of in cash as provided in the leases. The Bombay Tenancy Act does not prohibit the acceptance or rent in kind instead of in cash as agreed upon under the lease. If the tenants consider that the rent in kind as ~~xxxxx~~ recovered from them is more in value than the rent in cash, they can claim the recovery of the excess through court. The recovery of rent in kind instead of in cash in such cases would probably involve the breach of the Foodgrains Control Order provided the order was then in force. The Collector may be asked to consider this asvect of this case.

Sd/- P.M. LAD,

Remembrancer of Legal Affair

U.R. to R.D., No. 6990, dated the 24th June 1949.

Submitted for signature.

Id/- 23/6.

A.L.R. R.K. - 23/6.

R.L.A.

EVY. 11/6.

Office of the R.L.A.

mbay Tenancy Act, 939, and sec.16 mbay Tenancy and gricultural Lands ct, 1948, sec. 13.

hether tenants can withhold rent in lieu of rent not assed on by land- ord.

The question raised for the R.L.A's consideration are:

(1) Whether the tenant can lawfully withhold payment of rent for future years equal to the amount of remission that he was entitled to for the year 1947-48

(2) ~~2~~ Whether he can resort to a court now for the recovery of excess rent when his relations with the landlord will be governed by the provisions of the new Tenancy Act under which the jurisdiction of the court is now barred.

Under section 16 of the old Tenancy Act and under section 13 of the new Tenancy Act, the tenant can claim a set off in respect of the amount of remission when the landlord applies for rendering assistance for recovering the arrears of rent. He can also claim re ayment of the remission. There would, therefore, be no legal objection to the tenant appropriating the remission towards the rent payable by him after intimating such appropriation to the landlord. But it would not be legal for him to withhold payment of rent without intimating the landlord the appropriation of the remmission towards arrears of rent, for mere withholding of rent may involve termination of tenancy on the ground of non-payment of rent within the period as provided in section 14(1) of the new Tenancy Act.

~~M~~ Under the new Tenancy Act the ~~jurisdi~~ jurisdiction of the civil court is barred and under section 10, a refund of the excess rent can be claimed with compensation which can be determined by the Mamlatdar.

Consequently, the tenant will have to apply to the Mamlatdar for the recovery of the excess rent.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11380, dated the 12th October 1949.

Submitted for signature.

Id/- 11/10

A.L.R. R. K.
11/10.

R.L.A.

EVY. 11/6.

Legal Department.

The Bombay Tenancy and Agricultural Lands Act, 1948, Section 88(1)(c).

The first question for consideration is whether the rights acquired by the tenants under the old Bombay Tenancy Act, 1939, in respect of agricultural lands which are situated within the area referred to in section 88 sub-section(1) clause (c) of the Bombay Tenancy and Agricultural Lands Act, 1948 survive, and if so under what provisions should be land-lords apply for the possession of the said lands if they want them for their own cultivation?

Section 88 sub-section (2) clause (c) of the Bombay Tenancy and Agricultural Lands Act, 1948, provides that nothing in the foregoing provisions of the Act shall apply to any area within the limits of Greater Bombay and within the limits of the Municipal Boroughs of Poona City and Suburbans Ahmedabad, Sholapur, Surat and Hubli and within a distance of two miles of the limits of such boroughs; but section 89 which repeals the Bombay Tenancy Act with the exce tion of sections 3, 3(a) and 4 with certain modifications provides in sub-section (2) clause (b) that nothing in this Act or any repeal affected thereby shall save a expressly provided in this Act affect or be deemed to effect any right, title, interest acquired or accure before the commencement of this Act. If, therefore, any person has acquired the rights of the protected ten ant under the Bombay Tenancy Act, 1939, his rights will not be affected by the repeal of the said Act. Under section 31 of the Act of 1948 such persons are to be recognized as protected tenants. It, therefore, the

landlord has to determine the protected tenancy of such tenants he will have to do so under section 34 of the present Act. The only effect of section 88 sub-section (1) clause (e) is that no new rights of a protected ~~xxx~~ tenant can be acquired within the area specified in that clause.

2. The second question for consideration is whether leases, ~~xx~~ sales etc., made on or after 28th December 194 in respect of the lands falling within the limits of the area referred to in section 88 sub-section (1) clause (e) can be recognized. Since the lands themselves are exempted from the provisions of section 63 of the Act which prohibits transfers of agricultural lands to non-agriculturists, it appears that the said section has no application. The presumption made by the Collector in this respect is correct and there would, therefore, be no legal objection to the recognition of sales, leases and other transfers of the lands in the said area.

D.R. Dhuruvaraj

Sd/- ~~D.V. Vyas~~,

Additional Secretary to Government.

U.R. to R.D., No. 10154, dated the 6th September 1949.

Submitted for signature

Sd/- 5/9.

A.L.R. R.K. 6/9.

Addl. Secy.

Please see Additional Secretary's opinion No. 11388, dated 11/10/49.

EVT. 11/9.

Legal Department.

The view taken by the Secretary, Revenue Department, is not correct. Lands falling under clause (c) of section 88, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act, 1948, though exempt from the provisions of that Act are by virtue of section 89, sub-section (2), clause (b), sub-clause (i) subject to any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act. The right or protected tenancy acquired under the Bombay Tenancy Act, 1939, in respect of these lands is subject to the liability of the tenancy being determined under section 7 of that Act which corresponds to section 34 of the present Act. Consequently, the protected tenancy of these lands is liable to be terminated under section 34.

Sd/- [illegible],

Additional Secretary to Government.

U.R. to R.D., No. 11338, dated the 11th October 1949.

EVY. 11/6.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

R.L.A's opinion No. 8681 dated 27-7-1949.

R.L.A's opinion was based upon the special facts of the case and not upon the literal interpretation of the provisions of the Bom. Tenancy Act which have been correctly interpreted by Revenue Department. The facts of this case disclose that the applicant's father was a nominal tenant and that the real tenant was the applicant which position is admitted by the landlord. There is therefore no reason why the applicant should be denied the benefit of section 4(2). The words of a remedial staute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the persons intended to be relieved (See 1949 F.L.J. 144 at p. 150) It is difficult to draw any substantial distinction between section 3 and section 4(1). The explanation to section 3 was quoted in R.L.A's last opinion to show that the extention of the benefit of the father's nominal tenancy to his son, the applicant would not be against the spirit of the Act. Having regard to the particular facts of this case the R.L.A. sees no reason to reconsider his last opinion.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11541, dated the 17th October 1949.

EVY. 11-6.

Office of the R.L.A.

Bombay Tenancy Act, 1949. R.L.A's opinion No. 4408 dated 7-5-49, and No. 8705 dated 31-8-49.

R.L.A's opinion No. 4408 dated the 7th May 1949 which has been quoted by R.D. has no application at all to the present case. In that case the original lease was still subsisting and the sub-tenant could claim the benefit of section 33 of the Bombay Tenancy Act, 1939. Moreover, the question whether a statutory tenant recognized under section 3A of the Bombay Tenancy Act was entitled to the benefit of section 33 was not in issue at all. In the present case the main lessee had surrendered the lease with the result that the tenancy was extinguished and with it the it the sub-tenancy also. The sub-tenant Bandu could therefore claim only the benefit of section 2 A of the Bombay Tenancy Act and not of section 33 as there was no sub-lease subsisting. Even assuming that Bandu could claim the benefit of section 33, his sub-letting the land for the year 1947-48, as could be seen from the tenancy extract at p. 19 ante would attract the provisions of section 5, sub-section 2, clause (d). R.D. seems to have wrongly assumed that R.L.A's opinion No. 8705 dated 31st August 1949 about section 5(2) related to the sub-lease to Bandu in the year 1946-47. That assuption is entirely wrong. It was in respect of the sub-lease for the year 1947-48 by Bandu to one Appa that section 5, sub-section (2) clause (d) was attracted. Consequently, the R.L.A. sees no reason to reconsider his opinion No. 8705 dated 31st August 1949."

Sd/- P.M. IAD,
Remembrancer of Legal Affairs.

EVY. 11-6W.R. to R.D., 11681, dated the 19th October 1951

Office of the R.L.A.

The appeal is pending before the Grant Officer. Usually R.L.A. does not express any opinion in any matter pending before a tribunal particularly when Government is not a party. In this case it would be open to the agrieved party to apply in revision to the Revenue Tribunal. Any expression of opinion by the Remembrancer of Legal Affairs is likely to be embarrassing to the Grant Officer. In the circumstance the Remembrancer of Legal Affairs does not desire to express any opinion in the matter

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.O. to R.D., No. 12105, dated the 28th October 1949.

submitted for signature.

Sd/- 29/10.

A.L.R. R.K. - 28/10.

R.L.A.

EVY. 11.6.

Office of the R.L.A.

The question raised for the R.L.A's consideration are (1) Whether a permanent tenant is a landlord in relation to his sub-tenant and whether he can recover possession under section 34(1) of the Bombay Tenancy and Agricultural Lands Act, 1948; and

(2) Whether the Tenancy Aval Karkun can entertain an application for recovery of possession under section 34(1) of the Act from a person who claims permanent tenancy but who has not established such a claim.

"Tenant" as defined in section 2(18) of the Bombay Tenancy and Agricultural Lands Act, 1948, means an agriculturist who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act and the word "landlord" shall be construed accordingly. Under section 4 a person lawfully cultivating any land belonging to another shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not (a) member of the owner's family, or (b) a servant on wages, etc., or (c) a mortgagee in possession. Under this provision a sub-tenant of a permanent tenent would be deemed to a tenant and entitled to the protection of the Act. But this definition of "tenant" under section 2(18) read with section 4 does not determine the legal position of a permanent tenant as an intermediary between the landlord and the sub-tenant. However, section 3 provides that the provisions of Chapter V of the Transfer of property Act shall, in so far as they are not incon-

sistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies. Under section 108(j) of the Transfer of Property Act, the leases may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property and leassee shall not by reason only of such transfer cease to be subject to any of the liabilities attaching to the lease. In the case of a sub-lease, the sub-lessee becomes a tenant of the lessee and does not stand in the lessee's place. (See Mulla's Transfer of property Act, p. 681). Under section 27(1) of the Bombay Tenancy and Agricultural Lands Act, a sub-lease involves termination of tenancy but under the proviso thereto nothing in this sub-section shall prejudicially affect the rights of a permanent tenant or any tenant the duration of whose tenancy is presumed to be co-extensive with the duration of the tenure of the landlord under section 83 of the Bombay Land Revenue Code, 1879. It is therefore clear that this proviso saves the termination of a permanent tenancy in the event of a sub-lease and this proviso was specially inserted to protect the rights of permanent tenants. Reading these provisions together, it is apparent that a permanent tenant would be deemed to be a landlord of his sub-lessee and there would be no termination of his tenancy for such sub-lease. Consequently, section 34(1) would apply and the permanent tenant would be entitled to recover possession under that provision.

When a person is unable to prove permanent tenancy, he would not be entitled to claim to be the

landlord with reference to a sub-lease. Consequently, unless such person proves that he is permanent tenant, he would not be entitled to claim recovery of possession under section 34(1).

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.O. to R.D., No. 11486, dated the 13th October 1949.

EVT. 11.6.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 29(2) and 89(2)(b).

It is true that under section 89(2)(b)(i) of the Bombay Tenancy and Agricultural Lands Act, 1948, any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act are saved. But this is subject to the express provision "save as expressly provided in this Act". Section 29(2) provides that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar and for obtaining such order he shall make application in the prescribed form. In the present case it appears that the landlord has taken possession of the lands from the tenants on 30th July 1949, i.e. the date on which the Bombay Tenancy and Agricultural Lands Act came into operation in the area. The recovery of possession by the landlord would, therefore, clearly be in contravention of section 29(2). That being an express provision, section 89(2)(b)(i) will not come into operation. As soon as the Act came into operation, the jurisdiction of the civil court was ousted (see section 85(1)). Consequently, the civil Court had no jurisdiction to evict the tenants and to restore possession to the landlords since such power vested only in the Mamlatdar under section 29(2). Under section 70(n) it is one of the duties of the Mamlatdar to put the tenant or landlord or the agricultural labourer or artisan into the posses-

sion of the land or dwelling house under this Act. Since the tenants were unlawfully evicted in the present case, they may apply to the Mamlatdar under section ¢ 29(1) so that the Mamlatdar may hold ~~xxxx~~ an enquiry and pass the necessary orders under sub-section (3). Government has no power to interfere in the matter since even the revisional jurisdiction vests now in the Revenue Tribunal.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

R. to R.D., No. 12622, dated the 9th November 194

(Please see RLA's opinion No. 8874 dated 6-6-1951

submitted for signature.

Id/- 8/11.

A.L.R. R.K.- 8/11.

R.L.A.

EVY. 11/8.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, Section 29(2) and 85(1). Civil Procedure Code. Order 20 R.I. & Order 40 Rule I.

Possession of Court receiver - Relief Against.

The Legal position stated by R.D. in its office note at p. 19 ante is correct. However, a court receiver is an officer of the court and his possession is the possession of the court by its receiver and the tenants in possession when he is appointed to receive rents and profits of immoveable property become virtually tenants pro hac vice of the court, their landlord. His possession is the possession of all the parties to the proceedings according to their titles (see Mullas Civil Procedure Code, p. 1140). Since the receiver's possession of the land is the possession of the Court, it appears doubtful whether section 29(2) of the Bombay Tenancy and Agricultural Lands Act, which prohibits a landlord from obtaining possession of any land except under an order of the Mamlatdar, would be applicable and preclude the receiver from taking possession of the land from the tenant directly. It is also doubtful whether section 85(1), which bars the jurisdicti of the civil court, would come in the way of the receiver from obtaining possession under an order of the court; for in Barkat-un-nissa v. Abdul Aziz (22 Allahabad 214) it was held that an order of the magistrate passed under section 145 of the Code of Criminal Procedure is no bar to the exercise by the civil court of the power conferred on it by Order 21, Rule 1, to appoint a receiver in respect of the same property. Where a receiver

is appointed of property the subject of a suit and the property is forcibly taken possession of by any person, not only the parties interested in the property but also the receiver may proceed against such person for contempt. There is nothing to prevent the receiver from himself applying for a rule for contempt (see Grey v. Woogramchum, 28 Calcutta 790). Consequently, the proper course for the tenant of such land, if threatened with eviction by the receiver, is to apply to the court by which he has appointed for a party feeling aggrieved by the conduct of a receiver may seek redress against him in the very suit in which he was appointed receiver (see Kamatchi v. Sundaram 26 Madras 492). This would obviate the difficulty also of applying to the Mamlatdar under the Bombay Tenancy and Agricultural Lands Act for relief for no legal action can be taken against the receiver except with the leave of the court (see Order 40, Rule 1 of the Civil Procedure Code).

Sd/- P.M. KAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11384, dated the 12th October 1949.

Submitted for signature.

Id/- 11/10.

A.L.R. R.K. - 11/10.

EVY. 11/6. R.L.A.

Office of the R.L.A.

Although the Prant Officer's order appears to be correct on merits, it would be inexpedient to restore it at this stage. Because of Government's decision declining to review its order in revision, the landlord was obliged to commence a civil suit. The tenants will get a fair opportunity of establishing in that suit their claim to permanent tenancy. If Government now restore the Prant Officer's order, the landlord will naturally abandon his suit to the immediate prejudice of the ex tenants, who, on that account, have approached Government not to entertain the landlords application. In these circumstances, H.M. (R.D.) has rightly felt doubtful about the propriety of restoring the Prant Officer's decision. As the matter is already pending in Court, and as no new circumstances have come to light, it would not be proper for Government to reopen the case which it had closed and review its former decision.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 12988, dated the 16th November 1949.

Submitted for signature.

Id/- 15/11.

A.A.S. Id/- 15/11.

A.L.R. R.K. - 15/11.

R.L.A.

Y. 11/6

R.I. No. 18324 Ct. 9-11-49.

Submitted;

2. Government has accepted the view expresse by the R.L.A. in his opinion No. 2757 dated 10th March 1949 and set aside the four orders of the District Deputy Collector, Kaira in Tenancy Appeals No. 98 to 122 and pending appeal in the High Court recognized the applicants Messrs. Chaturbhai Naranbhai and others as protected tenants of the lands. The landlords Dadubhai Purshottamdas Desai and others have now complain od that the orders have been passed against them without giving them an opportunity of being heard in the matter, and have requested to stay execution of ~~that~~ the "ex-parte" order of Government till they are given opportunity for being heard. The R.D. concsiders that in revision applications Government is not bound to hear the opposite party, neither can such party as of right or necessity demand a hearing and before communicating such a reply, has shown a draft thereof to the R.L.A.

EVY. 11/6.

Office of the R.L.A.

Seen and returned.

Sd/- P.M. Lad,

Remembrancer of Legal Affairs.

J.R. to R.D., No. 12841, dated the 14th November 1949.

Submitted for signature.

Id/- 12/11.

A.L.R. R.K.- 12/11.

R.L.A.

NY. 11/6.

Office of the R.L.A.

The Bombay Tenancy Act, 1939.

The view taken by R.D. is not correct.

In Doed Aslin V Summersett, 1830, B & Ad 135 it was held that where a land was jointly demised, notice to quit signed by one of the joint lessors was held a notice by all to quit the whole. The same principle will apply in the present case and the application filed on behalf of two of the joint occupants of the land who are minors will have to be treated as one on behalf of all the joint occupants even though it has not been signed by the other two major joint occu ants.

Sd/- P.M, LAD,

Remembrancer of Legal Affairs,

U.R. to R.D., No. 6489 dated 27th July 1949.

Submitted for signature.

Id/- 25/7.

A.L.R. B.M. - 26/7.

R.L.A.

xxVx 11/8.

Office of the B.L.A.

It appears that certain merchants have taken grass lands on lease from landlords in Palghar Taluka and have been making huge profits by the sale of grass grown on these lands. The question raised for the B.L.A's consideration is whether these merchants are entitled to the benefits of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. Although ordinarily persons who have taken lease of the lands for the purpose of raising grass, which is an agricultural operation under the the Act, would be classed as tenants and would be eligible for the benefits of the Act, in this particular case they would not be so eligible. Section 88(1)(b) provides that nothing in the foregoing provisions of the Act shall apply to lands held on lease for the benefit of an industri or commercial undertaking. An "undertaking" has been defined in Webster's New International Dictionary, 2nd edn. to mean anything undertaken; any business, work or project, which one engages in or attempts; an enterprise. If the merchants are engaged in the businessof dealing in grass grown on the lands held on lease by them, the lands can be said to have been held on lease for the benefit of a commercial undertaking, accordingl the provisions of the Act will not apply to such lands.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11272, dated the 10th Octo. 1961

Legal Department.

It is no doubt true that the term 'Agriculture' as defined in section 2(1) of the Bombay Tenancy and Agriculture Lands Act, 1948, includes the raising of grass. There can, therefore, be no doubt that the land used for raising grass will be agricultural land within the meaning of the Act. But the question in this case is not whether such land is agricultural land. The question is whether a grass contractor who takes grass lands on lease for the purpose of carrying on a trade or dealing in grass is a tenant as defined in the Act. Section 2(17) of the Act defines a tenant to mean an agriculturist who holds the lands on lease. Section 2(2) defines an agriculturist as being a person who cultivates the land personally. 'To cultivate' has been defined as carrying on any agricultural operation. The point for consideration therefore is whether a grass contractor whose business is to deal in grass, but who leases grass land for the purpose, carried on agricultural operation. There would be many cases for mixed occupations or operations. Thus an individual or a concern may not only cultivate and raise agricultural produce but manufacture it into a state fit for market. In such cases it would be necessary to decide what is the dominant operation. Section 88(1)(b) of the Act therefore provides that any land held on lease for the benefit of a commercial or industrial undertaking shall be excluded from the operation of the Act. If a lease of agricultural land is held by such an undertaking, the Act expressly provides

that the lease will not be governed by the provisions of the Act and the lessee will not be entitled to its benefit. Similar questions have come before the Courts under the Income Tax Acts. Thus in a case referring to the Bihar Agricultural Income Tax Act, it was decided by the Patna High Court, after reviewing several authorities, that neither income from the sale of wood (Spontaneously grown) in jungle, nor that from letting land and trees for the cultivation of lac nor that from the wild forest in the jungle is agricultural income, because none of them require cultivation in the ordinary sense. Land held for agricultural purposes can only be land under cultivation i.e. active effort to grow things on the part of man (Bihar v Pratap Udainath (1941) I.T.R. 513). A similar view has been held by the Oudh Chief Court (Maharajah of Kapurthala v Commissioner of Income Tax U.P. (1945) I.T.R. 74). According to these decisions the criterion to decide whether the operation is agricultural or not is whether there was an active effort on the part of the lessee to grow agricultural produce. The definition of 'agriculture' in section 2(1) of the Bombay Tenancy and Agricultural Lands Act has been based on the same criterion. It excludes the cutting of wood. The definition is not exhaustive and is illustrative. It can, therefore, be held that in a case where the operation is a mere cutting of grass without any effort of the lessee to raise it and where the dominant factor is that such cutting is for the purposes of trade or business, the lease of the land is excluded from the operations of the Act. Each case will have to be decided on its own merits and the instances quoted by R.D. have no analogy. The view taken in R.D. is not correct, and I entirely agree with

the opinion expressed by the R.L.A.

Sd/- ~~D.V. Vyas,~~

Additional Secretary to Government.

U.R. to R.D., No. 12123, dated the 29th October 1949.

Submitted for signature.

Id/- 28/10.

A.A.S. Id/- 27/10.

Submitted after issue with an under card.

File in O Tenancy/49.

EVI. 11/6.

Legal Department R.I. No. 1107
Dated 20th July 1949.

Submitted.

It appears that one Mr. D.N. Datare, the agent of the Holkar's estate was duly summoned to appear before the T.A.K. Chander with the necessary documents to give evidence, but failed to do so without any cause.

The T.A.K. therefore wants to know

(1) Whether he can issue a warrant of arrest

(2) in what form and

(3) through whom it, should be executed to secure Mr. Datare's attendance.

The D.G.P., Nasik who was consulted in the matter is of the opinion that the Tenancy Court has the power in its discretion to issue a waraat for the arrest ~~xx~~ of the witness who has been served with a summons but failed to appear according to him, taking together the provisions of Section ~~X~~ 72 of the Tenancy Act, Rule 28 of the Tenancy Rules and Section 192 of the I.P.C. it would be right to use the form No. 17 of Appendix B of the C.P.C. under its order 16, Rule 10. He is further of the opinion that the process is intended to be a Civil process and that the T.A.K. can effect the arrest by its own peon or servant by giving him a duly addressed warrant.

R.D. agrees with the view taken by the D.G.P. R.L.A. has however been requested to advise in the matter.

Reply may be; The view taken by D.G.P. Nasik is correct. The form in appendix B to C.P.C. adopted addressed for the purpose and addressed by the

Mamlatdar to his peon for exception.

Sd/- R.L.A.

EVI. 12/6.

Office of the R.L.A.

Execution of warrant issued by the Mamlatdar or T.A.K.

The view taken by the District Government Pleader, Nasik, is correct. The form 17 in appendix B to Civil procedure Code may be adapted for the purpose addressed by the Mamlatdar to his peon for execution.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10465, dated the 15th September 1949.

Submitted for signature.

Id/- 13/9.

A.L.R. R.K. 13/9.

R.L.A.

EVI. 12/9.

Office of the R.L.A.

Whether tenancy is terminated if a portion of the S.No. is sub-let by a tenant. Sale of unassigned watan land to watandar of the same watan.

Bombay Tenancy & Agricultural Lands Act, 1948. Secs. 27(1) & 63(1).

Bombay Hereditary Offices Act. Section 5.

On the first question the view taken by the Revenue Department is correct. Under section 27(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 no subdivision of sub-letting of the land or assignment of any interest held by a tenant shall be valid. Subdivision, sub-letting or assignment shall make the tenancy liable to termination. The expression "land" used in this provision means the subject-matter of tenancy. There can be no partial termination of tenancy. The tenancy can be terminated as a whole. If the land which forms the subject-matter of the tenancy comprises of a portion of a survey number or the whole number, or more than one survey number, and if any part of such land is sublet, the whole tenancy can be terminated, with the result that the landlord would be entitled to possession of the whole land which forms the subject-matter of the lease.

2. On the second question, the view taken by R.D. is not correct. It is true that under section 5 of the Bombay Hereditary Offices Act, an unassigned watan land can be ~~xxxxx~~ sold to a watandar of the same watan and under section 63(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, no sale of land shall be valid in favour of a person who is not an agriculturist. If an unassigned watan land is sold to an agriculturist watandar of the same watan, there would arise no conflict between section 63(1) of the Bombay Tenancy and Agricultural Lands Act and section 5 of the Bombay Heredietary Offices Act. But a conflict will arise if such land is sold to a non-agriculturist even though he is a watandar of

the same watan. "When the later of two general enactment is couched in negative terms, it is difficult to avoid th inference that the earlier one is impliedly repealed by it. For instance, where a general Act exempted from licensing regulations the sale of a certain kind of beer and a subsequent one enacted that no beer should be sold without a licence, it would obviously be impossible to save the former from the repeal implied in the latter" (see Maxwell, p. 1419. Section 63(1) of the Bombay Tenancy and Agricultural Lands Act, which prohibits sale of land to a non-agriculturist, is a negative enactment. Section 5 of the Bombay Hereditary Offices Act, which impliedly allows the sale of a watanland to a watandar of the same watan, is an earlier enactment. It can therefore be deemed to have been impliedly repealed by section 63(1) of the Bombay Tenancy and Agricultural Lands Act to that extent i.e, sale of watan land to a non-agriculturist watandar of the same watan. Consequently, the sale of unassigned watan lands to a non-agriculturists would be void under section 63(1) of the Bombay Tenancy and Agricultural Lands Act, even though he is a watandar of the same watan. R.L.A's opinion No. 2791 dated 11-3-1949 has not application to the present case.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11299, dated the 10th October 1949.

Submitted for signature.

Id/- 8/10.

R.L.A.

EVY. 12/6.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948 Section 85. Transfer of cases before Civil Courts in Baroda.

The transfer to the Mamlatdars of cases pending in the Civil Courts was ~~xxxxx~~ clearly illegal and consequently the Collector of Baroda should be asked to direct the retransfer of these cases to the Civil Courts. It would be for the Civil Courts to decide whether, in ~~x~~ view of section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 they have any jurisdiction to try these cases.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.M. to R.D., No. 14286, dated the 9th December 1949.

Submitted for signature.

Id/- 8/12.

A.L.R. R.K.- 8/12.

R.L.A.

~~XVI~~, 12/6.

Office of the R.L.A.

Draft Reply.

Bombay Tenancy and Agricultural Lands Act, 1948.

Section 74(2) and 78(1). Summary dismissal of appeals - whether parties should be heard.

Under section 74(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, appeals against the orders of the Mamlatdar and Tribunal may be filed with the Collector in cases specified in clauses (a) to (s). Section 78(1) empowers the Collector to confirm, modify or rescind any order in appeal. Section 74(2) provides that save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code shall apply to appeals to the Collector under this Act as if the Collector were the immediate superior of the Mamlatdar or Tribunal and the Collector in appeal shall have the power to award costs. Section 203 of the Bombay Land Revenue Code in Chapter XIII provides for an appeal to the Collector from a subordinate officer's decision or order; and under section 209 in that Chapte "the appellate authoirty may for reasons to be recofded in writing either annual or reverse, modify or confirm the decision or order of the subordinate officer appeal ed mukm against or he may direct the subordinate office to make such further investigation etc. Provided that it shall not be necessary for the appellate authority t record reasons in writing when an appeal is dismissed summarily etc." It is true that the Collector in deciding the appeals under section 74 of the Bombay Tenancy and Agricultural Lands Act, would be exercising the quasi judicial powers but the provisions in chapter XIII of the Bombay Land Revenue Code which are made applicable in respect of such appeals do not prescribe any procedure for hearing the parties in appeal. A similar question was considered in Mohandas Mulji Sieka vs. The Collector of Bombay (49 B.L.R. 414) where it was held "where a non-judicial body or person is saddled by

the legislature with quasi judicial duties it or he must first of all follow the procedure, if any, which the legislature has prescribed for it or him and if and in so far as no such procedure is prescribed it or he must act in accordance with natural justice, that is to say it or he must hear the parties or at all events the parties against whom it or he is giving a decision fairly and must decide the matter itself or himself after due consideration. It must not for example, give a decision which is the result of an arbitrament of chance. It is not essential to natural justice that a quasi judicial tribunal should, like a court of law hear the parties present their case by word of mouth".

In the present case, as stated above, no procedure is prescribed for hearing the parties in appeals filed under section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948. The proper procedure, therefore, would be to act in accordance with natural justice. It is not actually necessary to hear the parties present their case by word of mouth. The appeals filed under section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948, may be presented either in person or by post. In cases where the appeals are presented to the Collector by the parties in person it would be sufficient if the Collector goes through the records and hears them if they so desire and decide whether the appeals should or should not be admitted. If he once decides that the appeals should not be admitted it would be open to him to dismiss such appeals summarily. In cases where the Collector has merely allowed the appeals to be presented, without considering the merits thereof, it would be necessary for him to hear the applicants or their pleaders and decide whether the appeals should be admitted or dismissed summarily, for to dismiss them without giving a hearing

would be opposed to natural justice (cf. proviso to x section 421 of the Criminal Procedure Code which contains the general principle that "no man shall be dondemned un-heard while section 421 provides for summary dismissal of jail appeals as it would be impracticable to give a hearing in such cases). In cases where appeals are presented through post, a similar procedure may be followed by the Collector and he may decide after hearing the applicants or their pleaders whether they should be admitted or should be dismissed summarily. In all cases where the appeals are admitted a x notice may be issued to the other side and a regular hearing given to the parties.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U.R. to R.D., No. 14732, dated the 19th December 1949.

EVY. 12/6.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

S.c. 2(1) Lease of right to pluck fruits.

"Agriculture" as defined in Section 2(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 includes horticulture. If a lease was for the purpose of gathering fruits from the trees on the land, the lease was not for horticultural purposes (20 I.C. 332). If in the present case also what was leased was the right to take fruits from the Bordi trees, it would not be an agricultural lease and the provisions of the Bombay Tenancy and Agricultural Lands Act would not be applicable. The view taken by the Deputy Secretary, Revenue Department is correct.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U.R. to R.D. No. 1428, dated the 9th December 1949.

Submitted for signature.

Id/- 8/12.

A.L.R. R.K. - 8/12.

R.L.A.

EVY. 12/6.

Office of the R.L.A.

The question raised for the consideration of R.L. A. is whether a protected tenant of watan lands is entitled to purchase such lands as provided in section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, without the permission of Government as required by the Bombay Hereditary Offices Act.

It is true that section 5 of the Bombay Hereditary Offices Act prohibits a watandar to alienate his property beyond his lifetime to any person not a watandar of the same watan without the previous sanction of Government. But section 32(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, provides:

> "Notwithstanding anything contrary in any law, usage or contract, but subject to the provisions of sub-section (6), a protected tenant shall at any time be entitled to purchase from the landlord the land held by him as a protected tenant".

This is a general provision which applies to watan as well as non watan lands and the words "notwithstanding anything contrary in any law, usage or contract" ever-ride the provisions of section 5 of the Bombay Hereditary Offices Act. Consequently, a protected tenant of a watan land would be entitled to purchase from the landlord the watan land held by him as a protected tenant irrespective of the bar of section 5 of the Bombay Hereditary Offices Act. But such alienation of the watan land will not alter its watan character (see R.L.A's opinion in U.R. to R.D. No. 3359, dated the 28th June 1933) and the land purchased by the tenant would be liable to resumption and other incidents of a watan land. R.L.A's opinion No. 2791, dated the 11th March 1949 will have not application to the present case.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 13447, dated the 24th November 1949.

EVY. 12/6.

Office of the R.L.A.

It appears that the Deonar village in the B.S.D. is leased in perpetuity to one Dhakjee Dadajee by the United East India Company in 1809 on an annual payment of a sum of Rs. 184-12-8 with the express intentition that the grantee might be induced to invest his capital and labour in making agricultural and other improvement thereon. The villagers of Deonar have now complained to Government that the present holder of the village has unlawfully encroached upon their gaothan land by selling portions thereof to others for cultivation and has also disposed of beds of nallas and tanks for cultivation, with the result that the cultivation as a whole has suffered and that they are put to much inconvenience by the reduction in the gumcharan land and also obstruction to the passages and roads in the village. The question raised for the R.L.A's consideration is whether, in view of these grievances of the villages, it would be competent for Government to take over the management of the village under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948. The R.L.A. is also requested to reconsider the question of amendment of the Land Revenue Code for controlling assignments of land for public wells, tanks, roads, grazing areas etc. in leased or alienated villages.

3. Under section 44 of the Bombay Tenancy and Agricultural Lands Act, Government has power to assume management of the landholder's estate when Government is satisfied that (1) on account of neglect of the landholder or disputes between him and his tenants, the cultivation of his estate has seriously suffered or (ii) when it appears to the Provincial Government that it is necessary for the purpose of improving the economic and social conditions of peasants or ensuring

the full and efficient use of land for agriculture.

I am afraid this section will not be of assistance. In the first place, it is intended to apply to the management of "estates" and not to individual villages. The whole scheme of Chapter IV shows that the entire estate as a whole is to be taken under management. There is no question in this case of the cultivation of the estate suffering on account of neglect or disputes between the landholder and his tenants. The villagers cannot all be the landholders' tenants; and moreover the disputes have not been shown to affect cultivation assuming such disputes to have persisted since 1938. The latter part will be equally inapplicable, because it appears that in consequence alienations the land has been put to the fullest and most efficient use by being converted into gardens.

In order to preserve the rights of the villagers in alientated villages, proper amendment will be in section 38 of the Bombay R. L.R. Code rather than the Tenancy and Agricultural Lands Act.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11595, dated the the 28th October 1949.

Issued

C.S.P.
18/10.

EVY. 12/52

Office of the R.L.A.

There would be no legal objection to Government assuming the management of the estate under Section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 unless the Court, after removal of Mr. Ginwalla has appointed another receiver.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U.R. to R.D. No. 15080, dated the 24th December 1949.

EVI. 12/6.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948.

R.L.A's opinion No. 15080, dated 24/12/49.

There appears no objection to Government assuming the management of the estate underx section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 and it would not be necessary to xx await the result of the Letters patent Appeal.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D. No. 296, dated the 9th January 1950

submitted for signature.

Id/- 7/1.

A.L.R. R.K. 7/1.

XVI. 12/6.

Office of the R.L.A

Bombay Tenancy and Agricultural Lands Act, 1948.

Sec. 89(3).

Whatever may have been the interpretation of the old Act i.e. the Bombay Tenancy Act, 1939 section 89(3) of the New Act i.e. the Bombay Tenancy and Agricultural Lands Act, 1948 appears to contemplate that the proceedings for the recovery of land under section 7 of the old Act could be entertained even by a Tenancy Aval Karkun. Further when the tenant himself agreed to surrender possession an application for possession on such surrender could be made to the Aval Karkun. So, the previous proceedings for restoration could be ignored and the surrender of land would be treated as a fresh proceeding for possession under section 24(3) of the old Act. In the circumstance the possession of the landlord can be legally defended and any interference with his possession by any order of Government passed in revision is likely to be challenged. The tenant is alleging that the landlord has let out the land to another tenant. If so, he can ask for restoration under the old Act, as his right under that Act has been preserved, notwithstanding its repeal.

Sd/- P.M?LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 13516, dated the 26th November 1949.

Submitted for signature.

Id/- 24/11.

A.L.R. R.K. - 24/11.

R.L.A.

EVI-12/6.

Office of the R.L.A.

Levy of Sakar in Gangad Estate. Bombay Tenancy and Agricultural Lands Act, 1948, Section 6, 7 and 11.

Although the levy of "Sakar" i.e. premium is not expressly prohibited by section 11 of the Bombay Tenancy and Agricultural Lands Act, 1948, it is so impliedly done by section 6 and 7 where under only rent is payable, which rent does not include premium (see section 105 of the T.P. Act which makes a distinction between premium and rent).

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 14215, dated 8th December 1949.

(Please see RLA's opinion no. 942 of 20-1-50)

EVY. 12/6